

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA - NORTHERN DIVISION**

BETTY ANN BURKS, <u>et al.</u> ,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	No. 2:06-CV-1081-MEF
	:	
EQUITY GROUP EUFAULA	:	
DIVISION LLC,	:	
	:	
Defendant.	:	

MOTION FOR SUMMARY JUDGEMENT

Defendant, Equity Group-Eufaula Division LLC ("Equity"), by its counsel, comes and files this Motion for Summary Judgment for the following reasons:

1. Summary judgment is appropriate under Section 3(o) of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 203(o), as evidenced by the collective bargaining agreements between Equity (or the Company predating Equity) and the union representing its employees, and the existing custom and practice.

a. The Eleventh Circuit, applying Section 3(o), has approved substantially similar line time arrangements in the poultry industry.

b. The Department of Labor has concluded that Section 3(o) requires approval of similar collective bargaining relationships.

2. Even in the absence of the bar of Section 3(o), plaintiffs' claims are precluded by the provisions of the Portal-to-Portal Act.

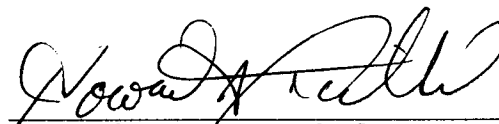
3. Equity is entitled to summary judgment for all claimed activities which do not take place at the facility such as "clearing security" or obtaining and maintaining tools such as knives and scissors or related clothing and mesh gloves.

4. Equity is entitled to summary judgment on plaintiffs' claims for "clearing security" (even if it was required) and walking time since such activities are not "integral and indispensable" to any principal work activity.

5. Equity is entitled to summary judgment on plaintiffs' claims for donning, doffing, washing and related activities since such activities are preliminary and postliminary under the Portal-to-Portal Act and do not constitute work under the FLSA.

6. Assuming, arguendo, that plaintiffs' donning, doffing, washing and related activities are not excluded by Section 3(o), nor are they preliminary or postliminary, such activities are de minimis as a matter of law.

WHEREFORE, for these reasons, and for the reasons set forth in the supporting Memorandum of Law which is being filed contemporaneously and is incorporated by reference, defendant requests that summary judgment be entered in its favor and against plaintiffs.



Howard A. Rosenthal
Gary D. Fry
Malcolm S. Gould
Attorneys for Equity Group
Eufaula Division, LLC

OF COUNSEL:

Pelino & Lentz, P.C.
One Liberty Place
Thirty-Second Floor
1650 Market Street
Philadelphia, PA 19103
(215) 665-1540

Joel P. Smith, Jr., Esquire
Williams, Pothoff, Williams
& Smith, LLC
125 South Orange Avenue
Eufaula, Alabama 36027-1626
(334) 687-5834

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CERTIFICATE OF SERVICE

The undersigned counsel for Equity Group Eufaula Division LLC certifies that true and correct copies of the Motion for Summary Judgment, supporting Appendix and proposed Order were filed and served electronically with the Clerk of Court and also were served by depositing true and correct copies in the United States Mail, first class postage prepaid, on May 30, 2008, and addressed as follows:

Robert J. Camp, Esquire
The Cochran Firm
505 North 20th Street
Suite 825
Birmingham, AL 35203
rcamp@cochranfirm.com

M. John Steensland, III, Esquire
Parkman, Adams & White
739 West Main Street
Dothan, AL 36301
parkman@graceba.net, jjsteensland@yahoo.com

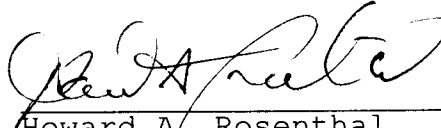
Richard Martin Adams, Esquire
Parkman, Adams & White
505 North 20th Street
Suite 825
Birmingham, AL 35203
parkman@graceba.net

Samuel A. Cherry, Jr, Esquire
Cochran, Cherry, Givens, Smith, Lane
& Taylor, P.C.
P.O. Box 927
Dothan, AL 36302
scherry@cochranfirm.com, samcherry@cochranfirm.com

Joseph David Lane, Esquire
Cochran, Cherry, Givens, Smith, Lane
& Taylor, P.C.
163 West Main Street
Dothan, AL 36301
jlane@cochranfirm.com, jdavidlane@aol.com

Robert Lee Wiggins, Jr., Esquire
Wiggins Childs Quinn & Pantanis, P.C.
The Kress Building
301 North 19th Street
Birmingham, AL 35203-3204
rwiggins@wcqp.com

Attorneys for Plaintiffs



Howard A. Rosenthal
Gary D. Fry
Malcolm S. Gould
Attorneys for Equity Group
Eufaula Division, LLC

OF COUNSEL:

Pelino & Lentz, P.C.
One Liberty Place
Thirty-Second Floor
1650 Market Street
Philadelphia, PA 19103
(215) 665-1540

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Defendant.	:	

O R D E R

AND NOW, this _____ day of _____, 2008, upon consideration of Defendant's Motion for Summary Judgment, and supporting Memorandum of Law, as well as plaintiffs' Response, it is ORDERED and DECREED that the Motion for Summary Judgment is granted and this action is dismissed with prejudice.

BY THE COURT:

Honorable Mark E. Fuller, Chief Judge